IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

CRL.A.No. 817 of 2001

ST.2881/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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APPELLANT/COMPLAINANT:

SATHEESH BABU, S/O KUTTAN NAIR,
VATASSERY, PERINJANAM DESOM,
PERINJANAM VILLAGE, KODUNGALLUR TALUK.

BY ADV. SRI.K.A.JALEEL

RESPONDENT/ACCUSED & STATE:

1. P.C.LOHITHAKSHAN, S/O SUMATHY, MALIYETT HOUSE,
   MATHILAKAM DESOM, PAPPINAVATTOM VILLAGE.

2. STATE OF KERALA REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.V.M.KRISHNAKUMAR
PUBLIC PROSECUTOR SRI.RAVINDRA BABU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

Crl.A.No. 817 of 2001

JUDGMENT

The complainant in S.T.No.2881/97 on the file of the Judicial First Class Magistrate's Court, Kodungallur is the appellant, being aggrieved by the acquittal of the first respondent/accused in the complaint filed by him under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act'). The learned Magistrate, considering the evidence adduced in the case, which consisted of oral evidence of PWs 1 and 2 and documentary evidence of Exhibits P1 to P7, adduced on the side of the complainant and oral evidence of DWs 1 to 3 and documentary evidence of Exhibits D1 to D6, produced on the side of the defence, found that the cheque complained of was one issued under a chitti transaction by way of security and not in discharge of any debt or other liability and hence, it does

not fall within the mischief of Section 138 of the Act, so as to convict the first respondent for the offence thereunder.

2. The definite case of the appellant/ complainant in the complaint is that the first respondent/accused is a business man, acquainted to him; that he borrowed an amount of Rupees ten thousand and on demand for return of the amount, he issued Exhibit P1 cheque for Rupees ten thousand at his residence, namely, the residence of the first respondent and the same was dishonoured for want of sufficient fund in the account of the first respondent and despite notice, he has not paid off the amount due either before the expiry of the statutory period or ever thereafter. In his deposition, his case is that the cheque was issued at his house (at the complainant's house) at the time when the loan was advanced. There is no explanation for this inconsistency in the case of the appellant and the counsel for the appellant has

no explanation to offer on this aspect.

3. The first respondent's case is that Exhibit P1 cheque is one among the three cheques received from him by Ananthapuri Group of Chits & Finance, of which, the appellant is one of the partners; that the cheques were being issued when he prized the kuri and that all instalments upto 23.6.1997 have been paid under the said kuri and the instalments payable thereafter alone are due to the Firm, of which, the appellant is a partner. It is seen from Exhibit D2 passbook for the kuri, in the name of the first respondent, that he prized the kuri on 5.2.1996 and received the prize amount on 14.3.1996 and that he has paid all instalments upto 23.6.1997.

4. The appellant, though, has a case that Exhibit P1 cheque has no relationship at all with the kuri transaction, he has no case that the amount under the kuri was being disbursed without obtaining any record and he has not produced any

record to show that any security bond was got executed from the first respondent, while disbursing the kuri amount. Further, though the appellant alleged in the complaint that himself and the first respondent have close acquaintance and the first respondent is a business man, he has stated, when examined as PW1, that the first respondent is a Coolie and that he doesn't know as to whether the accused is having any business. If at all the accused is a Coolie and the details of his sources of income are not known to the appellant, it is not at all likely that he would advance Rupees ten thousand to the first respondent without any record, whatsoever, so as to have Exhibit P1 cheque being issued to him by the first respondent only when he demanded for return of the amount. These aspects, as rightly observed by the learned Magistrate, have dislodged the presumption available in favour of the appellant under Section 139 of the Act. It was rightly being found by the

court below that Exhibit P1 cheque was issued by way of security and is not one issued in discharge of any debt or other liability due to the appellant /complainant, so as to fall within the mischief of Section 138 of the Act. Acquittal of the accused, in the circumstances, cannot be faulted.

This appeal, in the circumstances, is devoid of merit and is, hence, dismissed.

30th January, 2007 (K.P.Balachandran, Judge)

tkv

K.P.Balachandran, J.

Crl.A.No.817 of 2001

JUDGMENT

30th January, 2007